

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

---

JOSEPH SURMAN,

Plaintiff,

Hon. Richard Alan ENSLEN

vs.

Case No. 1:06 CV 0312

JANE BARAGAR, CHERYL L.  
STERLING and KATHY PALKA,

Defendants.

---

Roger W. Boer (P10926)  
Attorney for Plaintiff  
**ROGER W. BOER, PLLC**  
161 Ottawa Ave., N.W.  
Suite 502-D  
Grand Rapids, MI 49503  
(616) 742-1000

Karen M. Boer (P51276)  
Mikhail Albuseiri (P56529)  
Co-Counsel for Plaintiff  
**ALBUSEIRI & BOER,**  
**P.C.**  
161 Ottawa Ave., N.W.  
Suite 206  
Grand Rapids, MI  
49503(616) 459-0799

Mark F. Haslem (P45432)  
Co-counsel for Plaintiff  
**MARK F. HASLEM, P.C.**  
220 Lyon Sq., N.W.  
Suite 450  
Grand Rapids, MI 49503  
(616) 742-6732

Joel E. Krissoff (P16248)  
Micheline B. Pattee  
(P48003)  
Attorneys for Def. Sterling  
**FARR OOSTERHOUSE &  
KRISOFF**  
125 Ottawa Ave., N.W.  
Suite 333  
Grand Rapids, MI  
49503(616) 459-3355

Karl W. Butterer, Jr.  
(P51448)  
Attorney for Defendant Palka  
**SMITH HAUGHEY RICE  
& ROEGGE**  
250 Monroe Ave., N.W.  
Suite 200  
Grand Rapids, MI 49503  
(616) 774-8000

John M. Lichtenberg  
(P31770)  
**RHOADES MCKEE**  
161 Ottawa Ave., N.W.  
Suite 600  
Grand Rapids, MI 49503  
(616) 235-3500

Eugene B. Eardley (P48615)  
Attorney for Defendant Baragar  
**EARDLEY LAW OFFICES, P.C.**  
P.O. Box 830  
Cannonsburg, MI 49317-0830  
(616) 874-2674

---

**PLAINTIFF'S LEGAL SUPPLEMENT RE: DEFENDANT BARAGAR**

To prove conspiracy between private parties and the government under 42 USC §1983, an agreement or 'meeting of the minds' to violate constitutional rights must be shown." Adickes v. S.H. Kress & Co., 398 U.S. 144, 158 (1970). For purposes of establishing a prima facie case of liability, "nothing more than an 'understanding' and 'willful participation' between private and state defendants is necessary to show the kind of joint action that will subject private parties to §1983 liability[.]" Bendiburg v. Dempsey, 909 F.2d 463, 469 (11<sup>th</sup> Cir. 1990), and the plaintiff is not required "to produce a 'smoking gun' to establish the 'understanding' or 'willful participation' required to show a conspiracy . . . ." Rowe v. City of Ft. Lauderdale, FL., 279 f.3d 1271, 1283-1284 (11<sup>th</sup> Cir. 2002). Similarly, Plaintiff has not found any case law that would require equal participation among the co-conspirators in order for 42 USC §1983 joint action liability to attach to each and every co-conspirator.

For the foregoing reasons, Plaintiff submits that his earlier briefings to this Court regarding 42 USC §1983 liability attaching to the conduct and actions of Defendant Palka and Defendant Sterling are equally applicable to the conduct and actions of co-conspirator and co-defendant Baragar.

Respectfully Submitted,

Dated: July 21, 2006

/s/ Roger W. Boer  
Roger W. Boer (P10926)  
Attorney for Plaintiff

Dated: July 21, 2006

/s/ Mark F. Haslem

Mark F. Haslem (P45432)  
Co-counsel for Plaintiff  
mark@haslemlaw.com

Dated: July 21, 2006

/s/ Mikhail Albuseiri

Mikhail Albuseiri (P56529)  
Co-counsel for Plaintiff  
mail@albuseiriboerpc.com

Dated: July 21, 2006

/s/ Karen M. Boer

Karen M. Boer (P51276)  
Co-counsel for Plaintiff  
mail@albuseiriboerpc.com